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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,872	12/07/2005	Tatsurou Kawamura	2005_-1825A	2922
52349 7590 04/28/2009 WENDEROTH, LIND & PONACK L.L.P. 1030 15th Street, N.W. Suite 400 East Washington, DC 20005-1503				
EXAMINER RAJAN, KAI				
ART UNIT		PAPER NUMBER		
3769				
MAIL DATE		DELIVERY MODE		
04/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,872

Applicant(s)

KAWAMURA ET AL.

Examiner

KAI RAJAN

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30 - 51, 55, 56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30 - 51, 55, 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Examiner acknowledges the reply filed February 19, 2009.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 19, 2009 has been entered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 30 – 51, 55 and 56 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims positively recite limitations that overlap statutory classes. In particular, the terms “storing,” “calculating,” “making,” “averaging,” and “holding” in the claims are recitations of verbs, and are interpreted as method steps. In this case, the applicant has positively recited a method and an apparatus in the same claim. See MPEP 2173.05(p) II. The Examiner suggests amending the claims to recite “that stores,” “that calculates,” etc.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30 – 51, 55 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the terms “database making unit” and “value – added information making unit” render the claims indefinite, since it is unclear whether the “units” comprise hardware and software, or are merely software. The specification does not provide clarification, and without more it is nearly impossible for the Examiner to formulate a comprehensive search for the necessary limiting *structure* claimed by reciting the aforementioned “units.” The Applicant is invited to make the record clear regarding which *structure* comprises each of the aforementioned “units.”

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30 – 51, 55, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al. U.S. PgPub No. 2001/0031913.

30. A vital data utilization system comprising:

- a server (Paragraph 0040);
- a receiving apparatus (Figure 6); and
- a plurality of measurement instruments (Paragraphs 0035 – 0038),

wherein said server, said receiving apparatus, and said measurement instruments are connected to each other via a communication network (Figure 6),

wherein each of said measurement instruments includes:

- a vital data measurement unit operable to measure vital data of a subject of a plurality of subjects in a quantitative manner (Paragraph 0100);
- a clock unit operable to detect a measurement time at which the vital data of the subject is measured by said vital data measurement unit (Paragraph 0118); and
- a sending unit operable to send, to said server, a set of information including the measured vital data of the subject and the measurement time (Paragraphs 0122 – 0128, 0130 – 0133),

wherein said server includes:

- a receiving unit operable to receive, from each of said measurement instruments, a set of information including the measured vital data of the subject and the measurement time (Paragraphs 0122 – 0128);
- a storage unit (Paragraph 0128);
- a database making unit storing each received set of information in said storage unit and making operable to make a database associating each received set of information with a respective subject and measurement time (Paragraphs 0118, 0128, 0171);

a value-added information making unit calculating the vital data for each respective subject and measurement time stored in the database and making value-added information indicating changes over time of average values of the vital data calculated for the plurality of subjects (Paragraphs 0139, 0171); and

a value-added information providing unit operable to provide said receiving apparatus with the made value-added information (Paragraphs 0139 – 0153), and wherein said receiving apparatus includes an output unit operable to receive the value-added information provided by said value-added information providing unit and operable to output the value-added information (Paragraphs 0171 – 0178).

Independent claims 44, 46, 48, 55, and 56 are rejected on substantially the same basis under Ito et al., shown above. Dependent claims 31 – 43, 45, 47, and 49 – 51 are rejected by Ito et al. paragraphs 0002, 0118, 0128, 0160 – 0163, 0170 – 0178, 0192 – 0196,

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAI RAJAN whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

April 23, 2009